

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

The United States of America,

Plaintiff,

versus 3:12-CR-033

Philip Michael Sebolt,

Defendant

Before: HONORABLE JOHN A. GIBNEY, JR.
United States District Judge

Re-Sentencing

July 9, 2014
Richmond, Virginia

Gilbert F. Halasz, RMR
Official Court Reporter
U. S. Courthouse
701 East Broad Street
Richmond, Virginia 23219
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APPEARANCES

Thomas K. Johnstone, IV, Esq.
For the United States

Mark K. Tyndall, Esq.
For the defendant

The defendant
in his own proper person

1 THE CLERK: Case number 3:12 CR 33.

2 United States of America versus Philip Michael

3 Sebolt.

4 Mr. Thomas K. Johnstone, IV represents the United

5 States.

6 Mr. Mark K. Tyndall represents the defendant.

7 Are counsel ready to proceed?

8 MR. JOHNSTONE: United States is ready.

9 MR. TYNDALL: Ready.

10 THE COURT: Good morning.

11 MR. TYNDALL: Ready for Mr. Sebolt, Your Honor.

12 THE COURT: Good morning, Mr. Sebolt. How are you
13 today?

14 THE WITNESS: Good morning. All right.

15 THE COURT: Mr. Tyndall, thank you for taking this
16 case over. I appreciate that.

17 MR. TYNDALL: Of course.

18 THE COURT: All right.

19 We are here today to sentence Mr. Sebolt again
20 after his case was remanded from the Fourth Circuit for
21 re-sentencing. And we have a new presentence report.
22 Other than the issue that Mr. Sebolt has raised about
23 the guidelines, are you aware of any issues,
24 Mr. Johnstone, regarding the presentence report?

25 MR. JOHNSTONE: No, Your Honor.

1 THE COURT: Mr. Tyndall, other than that one, are
2 there any other issues?

3 MR. TYNDALL: No, sir.

4 THE COURT: Okay.

5 Have you had a chance, Mr. Tyndall, to meet with
6 Mr. Sebolt and go over the presentence report with him?

7 MR. TYNDALL: Yes, sir. Yes, sir, I have.

8 THE COURT: All right. Okay.

9 Mr. Tyndall, let me hear from you about your
10 issues with how the Sentencing Guidelines should apply
11 in this case.

12 MR. TYNDALL: Yes, sir. Your Honor, first of all
13 if this is the appropriate time, perhaps not,
14 Mr. Sebolt has shared with me, and wants me to share
15 with The Court, certificates he received in the Bureau
16 of Prisons.

17 THE WITNESS: What is it?

18 MR. TYNDALL: Certificates he has received.

19 THE COURT: All right. I will take those.

20 Do you have any objection to those, Mr. Johnstone?

21 MR. JOHNSTONE: No, Your Honor.

22 MR. TYNDALL: They have been shared with the
23 government.

24 THE COURT: Okay. All right.

25 So what I have here are a certificate of

1 participation to Mr. Sebolt in anger management; in a
2 program on anger management.

3 The certificate of successful completion of
4 beginning guitar class. And, sorry, there is a
5 certificate of completion of studies in Christian
6 Living. Advanced guitar class. And the most recent
7 one is another basic guitar class. This one looks like
8 it is from a different institution. And a certificate
9 of completion of a course in life-long health from
10 Terra Haute.

11 I will receive all of these into evidence and put
12 them in the file.

13 MR. TYNDALL: Thank you, Your Honor.

14 THE COURT: Thank you for bringing those,
15 Mr. Tyndall.

16 MR. TYNDALL: Of course.

17 THE COURT: All right, Mr. Tyndall let's --

18 MR. TYNDALL: Yes, sir, to address the objections
19 that were filed by Mr. Sebolt.

20 The Fourth Circuit, as The Court knows, decided on
21 February 11th of this year that the government has "No
22 Shepard-approved documents showing that Sebolt was
23 engaged in the production of child pornography.
24 Without these, it is unable to show Sebolt's conviction
25 was for conduct that is not exempted from the covered

1 sex crime definition in USSG 4B1.5 note two. End of
2 that quote, Judge.

3 Therefore, to be consistent with the Fourth
4 Circuit opinion, Your Honor, it is Mr. Sebolt's
5 position that the Sentencing Guidelines of 2G2.2,
6 specifically small "c," which is cross reference
7 related to production, it references Sentencing
8 Guidelines 2.G2.1, and therefore that is not properly
9 applied. Going in to that a little more
10 specifically -- and I know The Court has reviewed
11 2G2.2(c), cross reference number one, which said if the
12 offense involved causing, transporting, permitting or
13 offering or seeking by notice or advertisement a minor
14 to engage in sexually-explicit conduct for the purposes
15 of producing a visual depiction of such conduct for the
16 purpose of transmitting a live visual depiction of such
17 conduct, apply 2G2.1. Obviously a cross reference from
18 one section to the other. The one that has the higher
19 guideline range is the one that is supposed to be
20 properly applied to The Court.

21 Mr. Sebolt's position is because the Fourth
22 Circuit says the government cannot show production as
23 specific of this offense, that that cross reference
24 should not apply also, because it mandates that
25 production is also found.

1 THE COURT: All right.

2 MR. TYNDALL: Under that scenario, Your Honor, if
3 2G2.2 is used for the guideline range, it is our
4 position that it would be a level 27 with a criminal
5 history category of IV, which is a guideline range of
6 one hundred to 127 months.

7 THE COURT: Okay.

8 MR. TYNDALL: That is the argument on that.

9 As far as Mr. Sebolt's objection part two of what
10 he filed with this court, which basically I think in
11 broad terms talks about setting aside 18 USC 2251,
12 issue properly found under 18 USC 2252, I rely on what
13 he wrote.

14 THE COURT: That is pretty much an attack on his
15 conviction --

16 MR. TYNDALL: It is.

17 THE COURT: -- and not sentencing.

18 MR. TYNDALL: It is, Judge.

19 THE COURT: All right. Thank you.

20 MR. TYNDALL: Thank you.

21 THE COURT: Mr. Sebolt, do you want to add
22 anything to what he said since you are the person who
23 brought this issue before The Court.

24 THE DEFENDANT: No, Your Honor, I believe he
25 touched on everything that I would bring to the

1 attention of The Court.

2 THE COURT: Thank you very much.

3 Mr. Johnstone.

4 MR. JOHNSTONE: Thank you, Your Honor.

5 The way the government reads the defendant's pro
6 se motion, he actually has two objections. The first
7 is to the application of the cross reference in 2G2.2;
8 and the second, as The Court mentioned, would be an
9 attack on the statutory enhancement for his prior
10 convictions in Illinois.

11 With respect to the Sentencing Guidelines
12 themselves, there is an important distinction to be
13 made between 4B1.5 for repeat sex offenders, and the
14 cross reference in 2G2.2(c). Specifically, in the
15 definition of covered sex crime in 4B1.5, which the
16 instant offense must be a covered sex crime for the
17 enhancement to apply, the specific definition of
18 covered sex crime includes language specifically
19 exempting out the trafficking or possession of child
20 pornography. And as the Supreme Court clarified in the
21 Descamps decision, which was post sentencing in this
22 case, that limitation, that limiting language, is to be
23 read broadly.

24 So, in other words, if the defendant's conduct
25 includes behavior that is both exempted and non

1 exempted, then the exempted conduct trumps, for lack of
2 a better word, any enhancement does not apply. That is
3 why the government conceded that enhancement should not
4 apply in this case. Because the defendant's conduct
5 encompasses both production, at least the solicitation
6 of production of child pornography, but also the
7 attempted trafficking. In other words, he was having
8 the people send him the child pornography in the
9 prison. So it encompassed both exempted and non
10 exempted conduct. So under the Descamps decision, that
11 enhancement should not have applied.

12 The cross reference in 2G2.2(c), however, contains
13 no limiting language. In fact, it simply says if the
14 offense involved, causing, transporting, permitting or
15 offering or seeking by notice or advertisement a minor
16 to engage in sexually explicit conduct for the purpose
17 of producing visual depiction of such conduct.

18 THE COURT: Isn't that what he essentially in
19 those letters to the people overseas asked the parents
20 of those kids to cause their kids to pose in some
21 salacious way?

22 MR. JOHNSTONE: Exactly, Your Honor.

23 THE COURT: And that was an advertisement. And it
24 was an advertisement for the purpose of producing a
25 depiction. He asked the parents to take the picture.

1 MR. JOHNSTONE: Correct, Your Honor. No
2 reasonable person could look at the defendant's conduct
3 and say he was not seeking by notice or advertisement a
4 minor to be used in the production of child
5 pornography.

6 There is no limiting language in this cross
7 reference. In fact, in application note five in 2G2.2,
8 application note 5A, the sentencing commission says
9 that the cross reference in subsection C1 is to be
10 construed broadly. And includes all instances where
11 the offense involved employing, using, persuading,
12 inducing, enticing, coercing, et cetera, or seeking by
13 notice or advertisement, a minor to engage in sexually
14 explicit conduct.

15 So when you look at that language broadly the
16 defendant certainly did that. He enticed these parents
17 with money to use their children to produce child
18 pornography. So therefore the cross reference is
19 properly applied in this case.

20 THE COURT: Okay.

21 MR. JOHNSTONE: Thank you.

22 THE COURT: Thank you.

23 Mr. Tyndall, do you want to respond to that?

24 MR. TYNDALL: No, sir.

25 THE COURT: All right.

1 MR. TYNDALL: Thank you, Judge.

2 THE COURT: All right.

3 I find that that cross reference has been properly
4 applied in this case. So I overrule the objection. I
5 think that Mr. Sebolt, whatever else he might have
6 done, he certainly sought by notice or advertisement
7 for a minor to engage in sexually explicit conduct for
8 the purpose of producing the visual depiction of such
9 conduct. That is what he asked the parents to do was
10 to get their young children to pose in a sexually
11 suggestive way for photographs. And, in fact, as I
12 recall the advertisement in this case, he had a sliding
13 scale of what he would pay the people. And if it
14 was -- if certain actions were performed, I guess, oral
15 sex performed by the kid it was a certain amount more
16 than the basic price, and if there was genital
17 penetration of the child by an adult it was an
18 additional price above that. So, I don't see how you
19 can say that it doesn't fall within that cross
20 reference.

21 MR. JOHNSTONE: Your Honor, I failed to address
22 the second statutory provision. If I could do that
23 just briefly to put it on the record.

24 THE COURT: Okay.

25 MR. JOHNSTONE: As I read it the second objection

1 is the defendant doesn't think the statutory
2 enhancement should apply to him. But what he is doing
3 in that case, he is conflating the Guidelines with the
4 statutory provisions enacted by Congress. In this case
5 he was charged under 18 United States Code section 2251
6 D and E. His prior conviction, certified copies of
7 those convictions were introduced into evidence and
8 considered by The Court. He was convicted under that
9 statute. And therefore the statutory provisions are
10 triggered.

11 Thank you.

12 THE COURT: Thank you.

13 That objection I don't find to be valid either.
14 Really it is not a proper thing to take up at this
15 point because it an attack on his convictions, or the
16 essence of his conviction, I guess, of the enhanced
17 crime.

18 Let me just describe how the guidelines work out
19 in this case.

20 Let me point out as well that even if Mr. Sebolt's
21 interpretation of guideline 2 of the cross reference
22 2G2.1 -- I am sorry. I keep looking at the wrong one.
23 2G2.(c) -- got too many 2G2's. 2G2.2(c). Even if I
24 were to adopt his reading of that, it wouldn't make any
25 difference in what the ultimate guideline range is in

1 this case. Because this is a case in which the
2 sentence is mandated to be 35 years, 420 months, by the
3 code. And, in addition, it would not make any
4 difference on the sentence that I will impose in this
5 case because I wouldn't go down as low as he wants it,
6 or really below the 420 months level in any event.

7 The way the guidelines work out in this case is
8 that Mr. Sebolt has a base level of 36. The way we get
9 to that is, first we compute what his guidelines would
10 be without the cross reference. And for that he would
11 get 22 points for the basic offense of advertising
12 child pornography. Less two points off because there
13 was no intent to distribute. Plus two percent because
14 it involved prepubescent children. Plus five -- not
15 percent -- plus two points. Plus five points because
16 there is a pattern of sexual abuse of minors. And that
17 would total 27. Twenty-seven points.

18 But, under the cross reference we go to 2G2.1,
19 which has a base offense level of 32 plus four points
20 because there was a minor under 12 involved in this
21 case, in the sexual offense. So the adjusted offense
22 level is 36. There is no acceptance of responsibility,
23 so the total offense level is 36.

24 He has a criminal history of nine points; which
25 consists of six points for prior offenses, two points

1 because he was under a prior sentence; and one point
2 because the prior conviction of a crime of violence did
3 not receive points. And no one has objected to any of
4 that, I don't think. So, with nine points he is a
5 category IV. And a category IV leads to a guideline
6 sentencing range of 262 to 327 months. Plus, as I
7 noted before, there is a mandatory minimum in this case
8 of 420 months. So the guidelines are advisory only.

9 Let me inform the parties now about the documents
10 that I have received in this case besides the
11 presentence report. The first is a series of medical
12 records from the Bureau of Prisons which contain, I
13 must say to Mr. Sebolt's credit, a number of requests
14 for help with what I think he essentially believes is
15 an addiction to sexual conduct involving minors.

16 And I commend you, Mr. Sebolt, for asking for
17 that. And unfortunately, Mr. Sebolt has kind of fallen
18 victim to the bureaucracy which says that you can't
19 have sex offender treatment until you are close to your
20 release time. And then while he is in prison, he is
21 stuck with this addiction and he winds up committing
22 additional crimes which in turn put off the time for
23 which he would be eligible for treatment. So it is
24 kind of a Catch 22.

25 I also have received -- and this was -- these were

1 documents I received the first time around when we
2 sentenced him -- a letter from Mr. Sebolt himself
3 asking for help, which is entirely consistent with the
4 request that he made for treatment to the Bureau of
5 Prisons and sort of underlines it. I received a letter
6 at that time from his mother, uncle, and grandfather
7 requesting that Mr. Sebolt be given treatment. And a
8 letter, another, a second letter for this sentencing
9 from his mother and uncle requesting that we do
10 everything possible to get treatment for Mr. Sebolt.
11 And I am going to recommend that as part of a sentence.
12 I am going to recommend that they not wait until the
13 end of his sentence to do it, because I don't want him
14 to have to sit there forever with this obsession in his
15 mind that he can't do anything about.

16 I also received the various certificates that I
17 admitted into evidence a few minutes ago of things that
18 Mr. Sebolt has accomplished while he has been in
19 prison.

20 All right. At this time I will hear the parties'
21 position. The government in this case has moved for a
22 variance. And I will hear the government on its motion
23 for an upward variance, the 3553(a) factors, and the
24 appropriate sentence in this case.

25 MR. JOHNSTONE: Thank you, Your Honor.

1 While the technical calculation of the guidelines
2 in this case has changed, the underlying facts have
3 not. A review of those facts, in light of the factors
4 listed in 18 United States Code section 3553(a), you
5 can come to only one conclusion. The defendant is
6 simply too dangerous to ever be released from prison.
7 In its sentencing position the Government has outlined
8 a path for The Court to depart and vary upwardly, and
9 it hopes that The Court takes that path.

10 The criminal history category IV in the new
11 guidelines underrepresent the defendant's criminal
12 history and his risk for recidivism. He did not
13 receive a full three points for his state, for his
14 second state molestation conviction simply because that
15 conviction, the sentence for that conviction was
16 imposed at the same time as his first state molestation
17 conviction. Those two points alone would place the
18 defendant in criminal history category V.

19 In addition, the defendant can look to the
20 defendant's other conduct as an adult that went
21 uncharged. For instance, the exchange of letters in
22 December of 2008 while the defendant was housed at FCI
23 Petersburg would be an example of the criminal conduct
24 that went uncharged. The first was a letter from the
25 defendant to a woman in Srilanka, in which he was

1 requesting child pornography in exchange for money.
2 And the second was an in-coming letter from a woman in
3 Ethiopia in response to the defendant's request for
4 child pornography, thanking him for the money he had
5 sent, and enclosing a picture of a nude toddler.

6 In addition, The Court can look to the defendant's
7 behavior in his previous convictions in terms of
8 Illinois. The type of behavior not charged, for
9 instance, the defendant in on-line chats and in his
10 letters before and after prison, boasted about
11 molesting numerous children, talking about tactics,
12 talking about different attempts he had made to do
13 that. Even if the defendant was boasting, as he
14 suggests in his position, these comments have a great
15 impact on the type of people with whom the defendant is
16 communicating. He is normalizing those behaviors for
17 these type of people with this predilection with sexual
18 interest in children. And by doing so he increases the
19 likelihood they are going to offend against children.

20 Moreover, it is difficult to envision a set of
21 facts that falls further outside the heartland
22 contemplated by the Sentencing Commission in
23 establishing 2G2.1. The defendant's universe of
24 victims numbers in the thousands he molested. He has
25 molested put children. He ran a file server for the

1 purpose of trafficking in child pornography and
2 victimized thousands of children in those images of
3 videos. I believe file server had more than 27,000
4 images of child pornography in it.

5 THE COURT: You are saying that each person caught
6 in one of the images is a victim of his offense by
7 distributing it, or by having it in his file server,
8 but you are not saying that --

9 MR. JOHNSTONE: Absolutely.

10 THE COURT: -- not saying that he was involved in
11 creating those images.

12 MR. JOHNSTONE: No. We have no evidence of that,
13 Your Honor, but just merely in trafficking in that
14 material he is victimizing that child, he is
15 contributing to the harm that child has suffered by
16 making it more difficult for the child to cope with the
17 actual abuse that happened.

18 THE COURT: Well, that is pretty remote compared
19 to the people who actually create the stuff. But go
20 ahead.

21 MR. JOHNSTONE: Maybe so, Your Honor, but never
22 the less they are victims of the defendant's
23 trafficking in child pornography. I don't think there
24 can be any question about that.

25 THE COURT: Well, I think there is a question

1 about it, but it is okay. What he did is bad enough
2 without having thousands of victims.

3 MR. JOHNSTONE: And then, of course, Your Honor,
4 you have the children to which he exposed the risk of
5 production in his letters in exchange for money. But
6 this conduct is made even more egregious by the fact
7 that he did it beyond, or behind the walls of a BOP
8 prison facility.

9 I would also point out, Your Honor, that the
10 defendant shows no remorse for his conduct. None
11 whatsoever.

12 I haven't seen the medical records The Court was
13 referencing. He may have made some --

14 THE COURT: The first time around.

15 MR. JOHNSTONE: Okay. He may have made requests
16 for treatment, but I think his true intention can be
17 seen in the letters that he writes to private
18 individuals. In those letters he makes it crystal
19 clear that he intends to continue this conduct no
20 matter what. And he looks forward to doing so either
21 here or abroad if he is ever released from prison.

22 The defendant's criminal conduct places him in a
23 category all his own, far outside the heartland of the
24 sentencing commission was contemplating.

25 He has committed his adult life to preying on and

1 exploiting children. And for that he deserves a
2 lifetime in prison. And I would ask The Court to
3 impose that.

4 THE COURT: Your argument would be the same
5 essentially for the variance, that even if I don't
6 depart I should vary upwards because of the heinous
7 nature of the crime and the danger he poses to others.

8 MR. JOHNSTONE: Yes, Your Honor.

9 THE COURT: All right. Thank you.

10 MR. JOHNSTONE: As outlined in my sentencing
11 position.

12 THE COURT: Mr. Tyndall.

13 MR. TYNDALL: Yes, sir. Thank you. Your Honor --

14 THE COURT: With respect to the departure --

15 MR. TYNDALL: I understand.

16 THE COURT: -- I don't intend to depart upward.
17 You don't need to address that.

18 MR. TYNDALL: Variance?

19 THE COURT: The variance you need to address.

20 MR. TYNDALL: Yes, sir, Judge.

21 This young man, who is now 33, was 21 when he went
22 to prison. He has, as The Court has pointed out,
23 requested in writing and verbally in different
24 facilities for treatment at every stage. Those
25 requests are not done to impress anyone, because he is

1 already in the Bureau of Prisons. The government
2 mentions that while he continues his conduct behind the
3 walls of the prison, or Bureau of Prisons, I suggest
4 also to Your Honor we have a young man "obsessed" I
5 guess is the nicest word with these feelings, with the
6 obsession. He is behind the walls of prison with no
7 life. The obsession, I suggest to you, grows, and he
8 has nothing else in his life to focus on except for
9 these horrible images in his own mind.

10 He knows that. He is asking for help. So I think
11 that it is not an aggravating fact that it happened in
12 the Bureau of Prisons, but perhaps something that could
13 be mitigating because he has no other way except his
14 own self, and his thoughts. He knows they are out of
15 control. And he is trying to get help. But let me
16 also suggest to you, Judge, that asking for this
17 treatment or help or therapy, or whatever it is, is a
18 high form of remorse. It is a recognition of his
19 obsession and that something has to be done about it.
20 Nobody is coming to him and saying, maybe you should
21 get treatment. You get treated. He is doing that. He
22 is the one who recognizes that it is out of control and
23 it needs to be reeled in. I think that that is
24 extraordinarily important for The Court to consider.

25 Judge, I guess when we talk about variances we are

1 talking about the factors under 3553(a) for a great
2 part. Obviously to reflect the seriousness of the
3 offense.

4 THE COURT: Pretty serious.

5 MR. TYNDALL: I can't address. Can't address it
6 other than to say that, of course, it is an
7 extraordinarily serious offense. I was considering the
8 other day if someone walked into someone's house and
9 kills someone, breaks in in the night and kills
10 someone, that the public may be more forgiving of that.
11 This is an offense that rubs us in a very emotional
12 way, for obvious reasons. And I know The Court will,
13 and I ask for all of us, to try to look at these
14 factors without such emotion, even though our human
15 nature makes it so we can't help that. That is also a
16 reason, Judge, that Congress, if you look at the
17 statutes, and Congress if you look at the sentencing
18 guidelines, have extraordinarily met the facts and
19 extraordinary high punishments for this. I can't think
20 of anything else. Again, you look at murder. And this
21 is -- Congress has looked at it in depth and given you
22 extraordinarily harsh penalties for The Court to work
23 with.

24 So then we talk about deterrence of criminal
25 conduct. Obviously, the gentleman has got 14 more

1 years to go on his earlier conviction. And we are
2 looking at 420 months at 35 years. He is looking at 83
3 years old, or 82 years old when he gets out, with no
4 variance.

5 Deterrence is also, frankly, treatment goes to
6 deterrence. Frankly, there is an extraordinarily good
7 chance he could be civilly committed even if in the
8 80s. There no question of his lifetime supervised
9 release. There is no question there would be the sex
10 registry. And that is if he is extraordinarily lucky
11 enough to get out of prison alive even with what The
12 Court has to point out, with the additional 35 years.

13 I think that the other systems of deterrence --
14 and this also brushes over into the protect the public
15 from further crimes, with supervised release, with
16 civil commitment, which I think there is an
17 extraordinarily good chance even after his penal,
18 Bureau of Prisons -- civil commitment is going to come
19 into play. With the sex registry. We have to have
20 some faith in our system that has set up these
21 harnesses and treatments, that they can be effective to
22 an 80-some-year-old man. It is not the -- the only
23 bullet in your gun is not Bureau of Prisons.

24 The Congress, the government, has put other
25 factors in to protect the public and to deter further

1 criminal conduct.

2 I think that we also, obviously, have to look at
3 needed education, training, and treatment as one of the
4 factors under 3553(a). I think that we have covered
5 that today. Not only does he need the therapy and
6 treatment, Judge, he has been aggressive about seeking.
7 And, again, it is a very high form of remorse. You
8 have the young man -- well, I don't want to get into
9 argument here on sentencing. I don't know if you want
10 to complete it here, or just go over these factors
11 first on departure.

12 THE COURT: We are not going to do a departure.
13 That motion --

14 MR. TYNDALL: Or variance.

15 THE COURT: Variance.

16 MR. TYNDALL: But --

17 THE COURT: I want you to talk about the variance
18 and what you think is the appropriate sentence.

19 MR. TYNDALL: So I will. I think, I have
20 addressed the variance already under those factors.

21 THE COURT: They are pretty much the same factors
22 right now.

23 MR. TYNDALL: Sir?

24 THE COURT: Pretty much the same set of factors.

25 MR. TYNDALL: It is. It is. So I just believe it

1 is in place that a variance is not necessary. Again,
2 we have a gentleman who has been locked up since he was
3 21 years old. He has gotten no treatment. None.

4 We are, at the statutory minimum, we are -- it is
5 an additional 35 years. Again, he is going to be in
6 his 80s if he survives. There are things in place to
7 take care of all of the factors in 3553(a) without
8 additional years. And I am struck by the no remorse
9 situation. You have a young man who is in his own way
10 fighting for his life. I suggest to the Court there is
11 certain things he is afraid to say. Because he is
12 desperately looking for a light at end of the tunnel
13 that may not exist. And there are certain, I suggest,
14 things that he could and may even want to express that
15 he is fearful would hurt him down the road in finding
16 some way out of prison for the rest of his life.

17 I think when you see the other factors, that he is
18 not so fearful for, again, like asking for the
19 treatment, it infers remorse.

20 Judge, I just think that the punishment here, what
21 The Court has in its quill, satisfies all of the
22 factors of justice without a variance, Your Honor.

23 THE COURT: Okay. Thank you very much.

24 Mr. Sebolt, now is your chance to stand up and
25 tell me anything you want me to think about in imposing

1 sentence on you. You may do it there, or you may come
2 up to the podium, whichever you prefer.

3 THE DEFENDANT: I am going to decline.

4 THE COURT: Okay. Thank you. You may then be
5 seated.

6 All right.

7 Let me go through the 3553(a) factors.

8 The nature and circumstances of the offense.

9 Well, while he was an inmate Mr. Sebolt attempted to
10 get other people to send him pornographic images of
11 small children. He sent at least some of these
12 requests to people living in poverty in third world
13 countries, in Africa and Asia. Offering just very
14 small payment to the parents of the children to get
15 their children to do things that would be damaging for
16 the rest of their lives, like performing oral sex or
17 having vaginal sex.

18 It is significant, I think, that he used a fellow
19 inmate to smuggle these, a bunch of letters out that
20 were going to go to people asking for more photographs.
21 You know, that other inmate, it endangered him, because
22 I can't believe that he didn't know what he was
23 carrying, and it just takes advantage of the goodwill
24 of someone he met in prison, whether that guy knew what
25 he was carrying out or not, what he was carrying out of

1 this facility.

2 All right. As to history and characteristics of
3 the defendant. His criminal history is that he has a
4 prior federal child porn conviction leading to a 30
5 year sent. He has a state court child molestation
6 charge in which the sentence was concurrent with his
7 prior 30 year federal sentence.

8 On a personal level he comes from a pretty decent
9 home. His father was not much in the picture, if at
10 all. But he was raised by his mother, who seems like a
11 decent person, and certainly is a caring person as
12 evidenced by the two letters that she sent to me. She
13 really thinks the world of Mr. Sebolt notwithstanding
14 everything that has happened. And that is just what
15 you would want as a son, and you just what you would
16 want to see from any mother.

17 Apparently, throughout his younger years
18 Mr. Sebolt was very well behaved. And so his current
19 adult conduct was a surprise to his family members.

20 Dependents. He has none. He has never been
21 married. His physical condition is good. Obviously he
22 has a mental health issue with pedophilia. He does not
23 have a substance abuse problem that I can detect.

24 There is no history of that at all.

25 Educationally, as you can see from the documents

1 that he has filed with The Court, he is a very
2 articulate man, a very bright man. He graduated from
3 high school and has some college courses that he has
4 taken. He has got computer skills. If I had to sum up
5 his character, essentially I would say that while he
6 recognizes that he needs treatment, Mr. Sebolt will
7 employ any means to satisfy his sexual desire for
8 children. And going beyond the desire, what I have
9 never seen from Mr. Sebolt in my encounters with him is
10 any kind of empathy or any sense of understanding how
11 these actions hurt other people. It is just not there
12 in him. He has no empathy for the children, for their
13 parents, for other inmates. The harm to other people
14 is just not on his -- doesn't register on his radar.
15 He has no concerns about the fact that he has
16 victimized impoverished people in less developed parts
17 of the world. And he has vowed that he is going to try
18 to continue this conduct, or worse conduct.

19 The next factor that I am to consider under the
20 statute is the need for the sentence to reflect the
21 seriousness the offense, promote respect for the law,
22 and provide just punishment. Well, obviously, the
23 offense is terribly serious. It is just awful.

24 Respect for the law. Mr. Sebolt has not shown any
25 of that in this case. The fact that he did this in

1 prison is a slap in the face of the entire legal
2 system.

3 And provide just punishment. Well, it is almost
4 impossible not to provide a very heavy punishment in
5 this case, because the minimum is 35 years.

6 The next factor that I am to consider is the need
7 for the sentence to afford adequate deterrence. I
8 don't know how much it is going to deter Mr. Sebolt.
9 He is already in for 30 years when he did this. But we
10 need to send a message to people on the outside that if
11 they do this our society is not going to tolerate this,
12 and there are severe consequences. So I would say the
13 need to deter others is very, very important.

14 The next factor may be the most important factor
15 that I consider in this case, and that is the need for
16 the sentence to protect the public from further crimes
17 by Mr. Sebolt. He is pretty ingenious in terms of
18 trying to commit crimes and trying to victimize kids
19 while he is in prison. He is pretty persuasive in his
20 use of another inmate to smuggle his letters out. And
21 he has expressed a desire to molest children when he is
22 not in prison. And if there are inmates who are trying
23 to recover from this illness with which he suffers, or
24 of pedophilia, his actions in prison deter them. This
25 is what he said in a letter that he wrote to a woman in

1 Illinois. Kristine Secora. And this is an exact
2 quote. "Trust me, as a baby sitter I have touched,
3 licked, sucked, and photographed the genitals of many
4 little boys and girls as young as infants to as old as
5 12, usually five and under. I have done it all, and
6 tasted some of the best young penis slash vagina I can
7 ever taste. I miss it, and cannot wait until I can
8 have fun again. But next time in another country that
9 is more accepting."

10 Can't say much more about the need to protect the
11 public from further crimes than what he said in that
12 sentence.

13 The next factor is the need to afford him
14 education, vocational training, medical care and other
15 treatment. And I commend Mr. Sebolt on having tried to
16 do the best he can in terms of taking courses and
17 taking other -- trying to get treatment while he is in
18 jail. And I will recommend that the Bureau of Prisons
19 provide him with treatment for pedophilia early in his
20 sentence and not at the very end.

21 I am to consider the kinds of sentences available.
22 His mandatory minimum is 420 months in prison. And the
23 sentence can run up to life in this case. He gets a
24 fine. He can pay a fine of \$250,000, but obviously he
25 has no assets.

1 I am to take into account the guidelines and the
2 statements and so forth which we talked about today.
3 And his guidelines numerically amount to a suggested
4 guideline of 262 to 320 months, which is trumped by the
5 mandatory minimum.

6 The next factor I am to consider is the need to
7 avoid sentencing disparities among similarly situated
8 defendants. And as I noted earlier, everybody gets an
9 extraordinarily long sentence for the crime for which
10 he was convicted.

11 Thirty-five years by any stretch of the
12 imagination is a long sentence, and everybody -- there
13 just are not really significant disparities among
14 defendants convicted of this crime.

15 Restitution is a factor I am to consider, but it
16 doesn't seem applicable in this case.

17 There is a motion for a departure by the
18 government. That is denied.

19 As I have already denied that and Mr. Sebolt's
20 request for a departure. There is a motion for a
21 variance by the government. Essentially the grounds
22 for that are the danger to others and the horrid nature
23 of the crime in this case. I am going to grant that
24 variance and impose a sentence of life in this case
25 because of the factors that I just outlined above,

1 earlier. Specifically, the danger to others. And it
2 is just not safe to allow him to be on the streets. I
3 mean, it is dangerous to have him behind jail, as is
4 observed in this case, or behind bars, rather, as we
5 have observed in this case.

6 And I would add that while I am discussing this
7 that any of the departures that I would have given to
8 Mr. Sebolt reducing the guideline sentence would not
9 have affected the sentence in this case.

10 I believe a sentence of life with credit for time
11 served -- well, credit for time served is pretty
12 irrelevant -- sentence of life is sufficient but does
13 not exceed the amount of time necessary to achieve the
14 goals of sentencing as set forth in 18 U.S. code
15 section 3553. Specifically, a sentence of life will
16 reflect the seriousness of the offense, promote respect
17 for the law, provide just punishment for the offense,
18 afford adequate deterrence to criminal conduct, and
19 protect the public from further crimes Mr. Sebolt may
20 commit. As such a sentence of life is punitive and
21 will serve to promote respect for the law, as well as
22 to punish and deter Mr. Sebolt, and to deter others.

23 Mr. Sebolt, please stand up.

24 Pursuant to the factors set forth in 18 U.S. code
25 section 3553(a), and the Sentencing Reform Act of 1984,

1 and having considered the Federal Sentencing Guidelines
2 as advisory, it is the judgment of The Court that you
3 are hereby committed to the custody of the U.S. Bureau
4 of Prisons to be imprisoned for a term of life.

5 I recommend that you participate in the Bureau of
6 Prisons program to treat sex offenders. And I
7 recommend to the Bureau of Prisons that that happen as
8 close as possible to the beginning of your sentence
9 instead of at the end, so that whatever else happens
10 you are not tempted to do the kind of things that you
11 have done in this case.

12 If you are released from prison for any reason,
13 you will be placed on supervised release for a term of
14 life. That means within 72 hours of your release you
15 have to report in person to the probation office in the
16 district to which you are released. While on
17 supervised release you are not allowed to commit any
18 federal, state or local crimes. You shall not
19 unlawfully possess a controlled substance, and shall
20 not possess a firearm or destructive device. You will
21 comply with the standard conditions of supervised
22 release as recommended by the U.S. Sentencing
23 Commission. You will participate in a program approved
24 by your probation officer for the treatment and
25 monitoring of sex offenders. It may well be that you

1 won't need that because of any program you will get
2 while you are in prison. But if the probation officer
3 thinks it needs to happen, your obligation is to do
4 that. You will not be charged any of the costs of
5 that. You will waive any right to patient
6 confidentiality. And the probation officer will have
7 the right to see any treatment records that have been
8 created about you at any time.

9 You will not be required under any circumstances
10 to submit to a penile plethysmograph or ABLE assessment
11 of sexual interest without the probation officer coming
12 back and seeking permission to do that by The Court --
13 from The Court.

14 You will not have -- you will not -- on the
15 computer you will not access any pornographic materials
16 or pictures of nudity, nor get any magazines using
17 juvenile models in sexual poses. This would -- this
18 ban on pornographic images from the computer would
19 include whatever device it is that replaces the
20 computer as technology moves forward. So, you will not
21 through any means have access to any pornographic
22 material or pictures that displaying nudity.

23 You will obey -- you will comply with any sex
24 registration laws that are in effect upon your release.
25 Your probation officer will have the right to search

1 your person, your property, house, residence, vehicles,
2 your paper, computer, other electronic communication or
3 data storage devices or media at any time with or
4 without a warrant. And that includes, would include
5 your probation officer and any other law enforcement
6 officer who has reasonable suspicion concerning any
7 unlawful conduct or violation of a condition of
8 supervision.

9 I will not impose a fine in this case.

10 You do have to pay a special assessment in the
11 amount of a hundred dollars if you have not already
12 done to.

13 There was a forfeiture in this case of some
14 equipment, and that forfeiture is made a part of the
15 sentence and will be included in the judgment.

16 You have 14 days to appeal this sentence to the
17 United States Court of Appeals for the Fourth Circuit.
18 If you want to do that you need to file a notice of
19 appeal. If you ask Mr. Tyndall he will do that for
20 you. If you can't reach Mr. Tyndall, send a letter to
21 the clerk of this court, to the District Court not the
22 Fourth Circuit Court of Appeals, and tell them you want
23 to appeal the decision in this case. And they will get
24 the process rolling. And you don't have to pay any
25 money to do that, Mr. Sebolt.

1 I know this is a difficult sentence for a person
2 your age, and I am sorry to have to impose it, but I
3 have to think of the welfare of others besides you.
4 And your risk to society is tough. It is very a
5 difficult thing to deal with. I hope -- as I said
6 earlier, you are very articulate and smart person. I
7 hope that you can find a way while you are in prison to
8 use your intelligence and your education and your
9 skills to help others.

10 Mr. Johnstone, anything else you would like to
11 say?

12 MR. JOHNSTONE: No, Your Honor.

13 THE COURT: Anything else, Mr. Tyndall?

14 MR. TYNDALL: No, sir.

15 THE COURT: Mr. Tyndall, let me again thank you
16 for taking over a case in the middle. And I guess you
17 did that, too, didn't you, Mr. Johnstone?

18 MR. JOHNSTONE: No, sir. I was here from the very
19 beginning.

20 THE COURT: I thought Ms Wu had it.

21 MR. JOHNSTONE: She was on it with me.

22 THE COURT: Okay.

23 Well, thank you both for that.

24 Mr. Tyndall, thank you for a good job in a
25 difficult case.

1 Let's recess court.

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HEARING ADJOURNED

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Certified true and correct transcript.

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Gilbert F. Halasz, RMR

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Official Court Reporter

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